

BOISE, MONDAY, DECEMBER 3, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
)
 Plaintiff-Appellant-Cross Respondent,)
)
 v.)
)
 ROBERT ANDERSON,)
)
 Defendant-Respondent-Cross)
 Appellant.)

Docket No. 34411

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Honorable Tom Watkins, Magistrate Judge. Honorable D. Duff McKee, District Judge.

Ringert Clark, Chtd., Boise, for appellant-cross respondent.

Hon. Lawrence G. Wasden, State Attorney General, for respondent-cross appellant.

Robert Anderson was convicted by jury trial for misdemeanor driving under the influence with an alcohol concentration of .20 or more. The State presented evidence at trial of three BAC tests by Anderson registering respectively at .22/.19/.24. The court of appeals affirmed the district court's appellate decision reversing the jury verdict on the grounds of insufficient evidence. The district court denied and the court of appeals affirmed Anderson's cross-appeal for defective complaint and verdict, insufficient foundation to admit the BAC results and failure to sanction the State for failure to comply with a discovery order. The State appeals to this Court and Anderson cross-appeals to this Court.

BOISE, MONDAY, DECEMBER 3, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

V.

ALEXANDER ROBERT JOSLIN,

Defendant-Appellant.

Docket No. 32483

Appeal from the District Court of the Seventh Judicial District of the State of Idaho,
Bingham County. Hon. James C. Herndon, District Judge.

Scott E. Axline, Blackfoot, and Andrew H. Parnes, Ketchum, for Appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for Respondent.

Alexander Robert Joslin (Joslin) was convicted of statutory rape under Idaho Code § 18-6101(1). On appeal, Joslin challenges several evidentiary rulings including the exclusion of evidence of the victim's prior sexual experiences and the exclusion of the testimony of an expert witness. He also challenges the sufficiency of the evidence and the constitutionality of I.C. § 18-6101.

On the night of December 26, 2002, Joslin, who was nineteen at the time, went to a friend's house in anticipation of a ski trip with the friends the next day. At the house, Joslin met several young people, including S.L., a girl who was sixteen years old. Early the next morning, S.L. reported to the emergency room, and after receiving miranda warnings, Joslin later admitted having "intercourse" with S.L. The same day, the State charged Joslin with statutory rape under I.C. § 18-6101(1), rape by intoxication under I.C. § 18-6101(4), and forcible rape under I.C. § 18-6101(3).

The case went to trial on June 16, 2005, and a jury found Joslin guilty of statutory rape on December 10, 2004. The district court sentenced Joslin to a period of two years fixed and eight years indeterminate. Joslin timely appealed.

BOISE, MONDAY, DECEMBER 3, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

V.

JOHN SHELDON,

Defendant-Appellant.

Docket No. 34286

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Darla S. Williamson, District Judge.

Westberg McCabe & Collins, Chtd., Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Police officers stopped John Sheldon late one night when his vehicle failed to come to a complete stop. With his consent, the officers searched his vehicle for weapons. They discovered a set of brass knuckles and a nylon and fiberglass knife. Based on this evidence, the officers placed Sheldon under arrest and searched his vehicle again incident to the arrest. The search yielded a large brick of methamphetamine concealed beneath the driver's seat. Sheldon disclaimed knowledge of the methamphetamine. He was charged with trafficking in methamphetamine and concealing a weapon. At trial, the prosecution presented evidence of \$7,000 cash found in the vehicle. A detective also testified that Sheldon admitted he had dealt methamphetamine in the past, but claimed the methamphetamine in the vehicle was not his. The Court of Appeals affirmed the trial court. Sheldon sought review by the Supreme Court, which was granted.

BOISE, WEDNESDAY, DECEMBER 5, 2007 AT 8:50 AM

IN THE SUPREME COURT OF THE STATE OF IDAHO

STANLEY BYBEE, individual, and BYBEE)

AIR SERVICE, INC., an Idaho corporation,)

Plaintiffs-Counterdefendants-)

Respondents,)

v.)

DENISE ISAAC, an individual,)

Defendant-Counterclaimant-Appellant,)

and)

DUSTY'S FLYING SERVICE, INC., an)

Idaho corporation, and FARM AIR, LLC, an)

Idaho limited liability company,)

Defendants-Appellants.)

Docket No. 33251

Appeal from the District Court of the Fourth Judicial District, State of Idaho,
Elmore County. Hon. Michael B. McLaughlin, District Judge.

Lojek Law Offices, Boise, for appellants.

Kormanick, Hallam & Sneed, Meridian, for respondents.

Appellant Denise Isaac owned and operated Dusty's Flying Service, Inc., a crop dusting business servicing the area around Mountain Home. Isaac sold the company to Respondent Stanley Bybee in 2001. The purchase agreement included a covenant that "Denise Isaac d/b/a Dusty's Flying Service shall not compete directly or indirectly with Stan Bybee d/b/a Nyssa Air Service . . ." for five years. Bybee formed a corporation in 2002 named "Bybee Air Service, Inc." and he transferred all of the inventory and assets of Nyssa Air Service into the corporation.

Ms. Isaac worked for both entities until 2004 and then began to work for Farm Air, LLC (Farm Air). Once Isaac began working for Farm Air, it obtained many of the customers that were previously using Bybee Air Service, Inc. Bybee and Bybee Air Service, Inc. (Respondents) filed suit against Isaac for breach of contract and breach of the implied covenant of good faith and fair dealing. Respondents also brought claims of tortious interference with contract and tortious interference with prospective economic advantage against Farm Air. Isaac

counterclaimed for breach of employment contract, verbal abuse, harassment, discrimination, and non-payment of wages.

At the close of jury trial, the court instructed the jury it was dismissing Isaac's claims surrounding verbal abuse and physical touching and to disregard that testimony when deciding the contract claims. The jury found that Isaac breached the non-competition agreement and that Farm Air tortiously interfered with the contract at issue and with the prospective economic advantage of Bybee Air Service, Inc. Isaac filed alternative motions for judgment notwithstanding the verdict and a new trial, which were denied. On appeal Isaac argues the non-compete agreement is unenforceable and that in any case Isaac did not breach the non-compete agreement, that the jury was erroneously instructed, that there is no evidence Farm Air committed any tort, and that the covenant of good faith and fair dealing in employment contracts is breached when an employer engages in sexual harassment.

BOISE, WEDNESDAY, DECEMBER 5, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**KIRBY HALL and LINDA HALL, husband)
and wife, and BASIL "SAM" HALL and)
ELAINE HALL, husband and wife,)**

Docket No. 32326

Plaintiffs-Appellants-Cross Respondents,)

v.)

**FARMERS ALLIANCE MUTUAL)
INSURANCE COMPANY, a Kansas)
corporation,)**

Defendant-Respondent-Cross Appellant.)

Appeal from the District Court of the Third Judicial District of the State of Idaho, Canyon County. Honorable Gregory M. Culet, District Judge.

Johnson & Monteleone, L.L.P. for Appellants-Cross Respondents

Benoit, Alexander, Harwood, High & Butler, L.L.P. for Respondent-Cross Appellant

Kirby and Linda Hall's residence sustained severe damage after Zdzislaw Piekarski repeatedly plowed a semi into their home. The Halls had acquired a \$63,000.00 homeowner's insurance policy from Farmers Alliance Mutual Insurance Company. This case arises out of the Halls' claim that Farmers Alliance Mutual Insurance Company breached its agreement with the Halls. The case proceeded to trial, and a jury awarded \$18,650.00 compensatory damages and \$660,000.00 punitive damages. The presiding judge, the Honorable Gregory Culet, remitted the punitive damages award to an amount that equaled a 4:1 ratio between punitive damages and compensatory damages (\$74,600.00). Both parties appeal from this ruling.

BOISE, WEDNESDAY, DECEMBER 5, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

NEIGHBORS FOR A HEALTHY GOLD)	
FORK, an Idaho unincorporated association,)	
)	
Petitioner-Appellant,)	
)	
v.)	
)	
VALLEY COUNTY, a body politic of the)	
State of Idaho; and the BOARD OF)	
COUNTY COMMISSIONERS OF VALLEY)	Docket No. 33552
COUNTY, in their official capacities,)	
)	
Respondents-Respondents,)	
)	
and)	
)	
WILDWOOD DEVELOPMENT, LLC,)	
)	
Intervener-Respondent.)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Valley County. Hon. George D. Carey, District Judge.

Mona L.D. Mack, Boise, for appellant.

Matthew C. Williams, Valley County Prosecutor's Office, Cascade, for respondents.

Williams Bradbury, P.C., Boise, for intervenor-respondent.

Wildwood Development, LLC filed an application seeking approval for an 88 unit residential planned unit development in Valley County. The proposed development contemplates dividing approximately 30 acres of land adjacent to Lake Cascade into 11 single family detached residential lots, 65 single family attached townhouses, and 12 affordable housing units. The development also sets aside over 15 acres of common/open space to be improved with natural areas, landscaped areas, recreational facilities, walking paths and boat docks for use by homeowners. The Valley County Planning & Zoning Commission held two public hearings, at which nearby neighbors and interested parties presented testimony in opposition to the development. After the second hearing, the Commission recommended

approval of the application, subject to certain conditions. The Valley County Board of Commissioners then held two hearings on the application. At the conclusion of these two hearings, the Board approved the application, subject to the stated conditions, and issued a conditional use permit. Neighbors for a Healthy Gold Fork sought judicial review in the district court, which upheld the Board's decision. Neighbors appeals to the Idaho Supreme Court asserting the Board violated numerous procedural due process rights and acted arbitrarily and capriciously when it approved Wildwood's development application allegedly in violation of provisions of the County land use and development ordinance.

BOISE, FRIDAY, DECEMBER 7, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ELIZABETH J. MC CABE,

Claimant-Appellant,

v.

**JO-ANN STORES, INC., Employer, and
LIBERTY NORTHWEST INSURANCE
CORPORATION, Surety,**

Defendants-Respondents.

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Docket No. 33675

Appeal from the Industrial Commission of the State of Idaho.

Emil F. Pike, Jr., Twin Falls, for appellant.

Harmon, Whittier, & Day, Boise, for respondents.

This is an appeal arising from a worker's compensation claim whereby the Claimant suffered muscle strains to her back, neck, and shoulder whilst working at JoAnn Fabrics, Inc. in Twin Falls, Idaho. The Industrial Commission of the State of Idaho found that the Claimant was not entitled to a permanent disability rating in excess of her uncontested 7% whole person physical impairment rating. On appeal the Claimant contends that the Commission erred in not properly considering non-medical factors in its decision.

BOISE, FRIDAY, DECEMBER 7, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

PARKSIDE SCHOOLS, INC., an Idaho)
corporation,)
)
Plaintiff-Respondent,)
)
v.)
)
BRONCO ELITE ARTS & ATHLETICS,)
LLC., an Idaho limited liability company, and)
BRANDON PAINE, an individual,)
)
Defendants-Appellants.)

Docket No. 32611

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Deborah A. Bail, District Judge.

Perkins Coie, LLP, Boise, for appellants.

Bill Smith & Associates, PA, Boise, for respondent.

Parkside Schools, Inc. leased two spaces from Bronco Elite Arts & Athletics. Parkside failed to exercise its option to extend on one of the spaces, and its lease on the other space automatically expired. Bronco Elite notified Parkside that its leases on both spaces would expire in five months. Parkside attempted to retain the space and filed a complaint against Bronco Elite. Parkside also filed an application for a temporary restraining order and a preliminary injunction, which the district court denied. Shortly after, Parkside dropped its claims and filed a motion to dismiss, which the district court granted two days later. The district court declined to award attorney fees to Bronco Elite for defending the suit. Bronco Elite filed a notice of appeal, contending it was entitled to attorney fees under the lease with Parkside and under I.C. § 12-120(3).

BOISE, FRIDAY, DECEMBER 7, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

TIMOTHY S. HEINZE,

Plaintiff-Appellant,

V.

CHARLES B. BAUER,

Defendant-Respondent.

Docket No. 33579

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County, Honorable Kathryn A. Sticklen, District Judge.

Ellis, Brown & Sheils, Boise, for appellant.

Moffatt, Thomas, Barrett, Rock & Fields, Boise, for respondent.

Appellant Timothy Heinze retained Respondent Charles Bauer, an attorney, to represent him in his divorce. The divorce had two main issues, the division of the couple's property, and the custody arrangement of their child. During the trial, the parties agreed on a settlement. The parties ultimately stipulated to the settlement on the record, before the magistrate judge.

Two days after the settlement, Heinze informed Bauer that he didn't understand, and felt uncomfortable with, the terms of the division of property. Bauer unsuccessfully attempted to set aside the settlement on behalf of Heinze. Thereafter, Heinze filed an attorney malpractice action against Bauer, alleging that Bauer negligently represented him in the divorce proceedings and as a result Heinze suffered damages in excess of \$100,000. The district court dismissed Heinze's action, concluding that he was judicially estopped from maintaining an action against Bauer. Heinze now appeals to this Court to determine if judicial estoppel prevents him from bringing an attorney malpractice action against Bauer.

BOISE, MONDAY, DECEMBER 10, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

VERDENE PAGE,)	
)	
Claimant-Appellant,)	
)	
v.)	
)	Docket No. 33158
MCCAIN FOODS INC., Employer,)	
TRANSCONTINENTAL INSURANCE)	
COMPANY, Surety,)	
)	
Defendants-Respondents.)	

Appeal from the Industrial Commission.

L. Clyel Berry, Chtd., Twin Falls, for appellant.

Moffatt, Thomas, Barrett, Rock & Fields, Boise, for respondent.

Appellant VerDene Page was employed by McCain Foods, Inc. Page filed a claim for worker's compensation benefits arising out of an injury occurring on August 17, 2001. The Idaho Industrial Commission denied the claim, Page appealed, and this Court reversed and remanded the claim holding the Commission erred in concluding Page's claim was barred for lack of proper notice and in concluding Page did not experience an "accident."

On remand, the Commission awarded Page total disability and related medical care benefits through November 26, 2001, and awarded Page a "1% whole person" permanent impairment and a 5% permanent partial disability resulting from the accident.

On appeal, Page argues that she should have been awarded benefits beyond November 26, 2001, that she suffered more than a 1% whole person permanent impairment and more than a 5% permanent partial disability, and that she is totally and permanently disabled pursuant to "odd-lot" theories. Page also asserts her motion to reconsider was timely filed and that the Commission's failure to address the merits of the motion was error. Additionally, Page asserts the Commission erred by denying her motion to reopen the record and by declining to review Page's claim of manifest injustice under I.C. § 72-719(3). Finally, Page contends the Commission erred when it failed to award Page attorney fees for the first appeal and that Page is entitled to an award of attorney fees for the present appeal.

MONDAY, DECEMBER 10, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

V.

CARL ADAIR, II,

Defendant-Appellant.

Docket No. 33270

Appeal from the District Court of the Second Judicial District, State of Idaho, Nez Perce County. Honorable Jeff M. Brudie, District Judge.

Molly J. Huskey, State Appellate Public Defender, for appellant.

Hon. Lawrence G. Wasden, State Attorney General, for respondent.

Defendant-Appellant Carl Adair II (Adair) appeals the district court's denial of his Rule 35 motion for reduction of sentence. Adair was sentenced to seven years, with three years fixed, for sexual battery of a minor child sixteen or seventeen years old. He contends that the sentence is excessive and that the district court abused its discretion by denying his Rule 35 motion. He appeals to this Court.

BOISE, WEDNESDAY, DECEMBER 12, 2007 AT 10:00 AM

IN THE SUPREME COURT OF THE STATE OF IDAHO

COMMERCIAL VENTURES, INC.,)

Plaintiff-Appellant,)

v.)

THE REX M. & LYNN LEA FAMILY)

TRUST, LYNN LEA, Trustee, LYNN LEA,)

an individual, LEA ELECTRIC, INC., a)

dissolved Idaho corporation,)

Defendants-Third Party Plaintiffs-)

Respondents,)

and)

WILLIAM R. BARNES, GARRET JAMES)

LONGSTREET, FR&L, INC., an Idaho)

corporation, d/b/a CENTURY 21 1ST)

PLACE REALTY, and ERIC A. WILDE,)

Defendants-Third Party Defendants-)

Respondents.)

Docket No. 33139

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Kathryn A. Sticklen, District Judge.

Perry Law, P.C., Boise, for appellant.

Houst Law Office, Boise, for respondent Lea Family Trust.

Stephen James Lord, Boise, for respondents Barnes, Longstreet & FR&L.

Brassey, Wetherell, Crawford & Garrett, Boise, for respondent Wilde.

On July 8, 1998, Respondent Lynn Lea (Lynn) executed a Listing Agreement with Appellant Commercial Ventures (Commercial). The Listing Agreement covered the possible sale of Lea Electric, Inc.'s (Lea Electric) business assets and the real property associated with Lea Electric. The business assets were owned by Respondent Lea Electric, and the real property

was owned by Respondent The Rex M. and Lynn Lea Family Trust (the Trust). Lynn is the sole shareholder of Lea Electric and the sole trustee of the Trust.

David Lamarque contacted Arthur Berry, the broker for the transaction, about purchasing commercial real estate. Berry told Lamarque that Lea Electric was for sale. On July 27, 1998, Lamarque entered into two agreements: a Business Assets Purchase Agreement (BAPA) regarding the business assets of Lea Electric, and a Lease with Purchase Option (LPO) regarding the real estate. The BAPA covered the business assets of Lea Electric and was executed by Lamarque and Lea Electric. The LPO covered the real property and was entered into by Lamarque and the Trust. By its terms, the LPO expired on July 26 or 27, 2003.

In 2003 Lamarque decided to purchase the property, and formed Lamarque Properties, LLC. He, however, wanted to pay only its current appraised value (\$735,000) rather than the option purchase price (\$780,000). Lynn, on behalf of the trust, agreed to the appraised value as a fair purchase price. Prior to the expiration of the LPO, Lynn became acquainted with Respondent Eric A. Wilde. Wilde worked as a real estate agent with Century 21 First Place Realty, and his broker was William R. Barnes. Also, prior to the expiration of the LPO, Barnes contacted Lamarque and asked him to defer the purchase until the expiration of the LPO. After the expiration of the LPO, Lynn entered into a commission agreement with Barnes. The commission agreement provided for a commission lower than either the Listing Agreement or the BAPA. Also after the expiration of the LPO, Lamarque Properties, LLC and the Trust entered into a commercial real estate purchase and sale agreement. The sale of the property closed on July 31, 2003, and Barnes, Wilde and Mike Gamblin, another broker associated with Wilde, received a portion of the commission.

After learning of the sale Commercial filed a complaint seeking a 7% commission on the sale of the real property against Respondents Lynn, the Trust and Lea Electric (collectively "Lea Respondents"). Commercial later amended its complaint to include breach of contract and tort claims. Commercial then filed a motion for partial summary judgment and the Respondents filed motions for summary judgment. The district court granted the Respondents' motions and denied Commercial's motion. Commercial moved for reconsideration, which the district court denied. The district court then awarded costs and attorney fees to various Respondents.

Commercial appeals the granting of summary judgment to the Respondents, the denial of its motions to reconsider and to amend its complaint, and the award of costs and attorney fees. Commercial argues that the Listing Agreement and BAPA provide for it to receive a commission on the 2003 sale of the real property. It also argues that the district court erred in not considering its mutual mistake arguments on reconsideration and that because the district court erroneously granted summary judgment, this Court should reverse the award of costs and fees below and should reverse the decision not to allow Commercial to amend its complaint to include a prayer for punitive damages.

BOISE, WEDNESDAY, DECEMBER 12, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**GLENN KOCH, JOYCE CHASE,
CARL CHASE, KATHY ALDER,
PAUL ALLDREGE, ATWELL
PARRY, GINA LUJAK, DELORIS
CRAM, DICK WINDER and BOB
CARPENTER,**

Plaintiffs-Appellants,

v.

**CANYON COUNTY, a political
subdivision of the State of Idaho; and
THE IDAHO ASSOCIATION OF
COUNTIES CAPITAL FINANCE
CORPORATION, a 501(c)(3) non-
profit corporation,**

Defendants-Respondents.

Docket No. 33707

Appeal from the District Court of the Third Judicial District of the State of Idaho,
Canyon County. Hon. Gregory M. Culet, District Judge.

Richard L. Harris, Caldwell, for Plaintiffs-Appellants.

Charles L. Saari, Caldwell, and Moore, Smith, Buxton & Turcke, Boise, for
Defendants-Respondents.

The Plaintiffs-Appellants are residents of Canyon County (the Residents) who appeal the district court's order dismissing their case against Canyon County (the County) and the Idaho Association of Counties Capital Finance Corporation (IACCFA).

On March 27, 2006, the County entered into a ten-year lease with the Arthur J. and Grace L. Jerome Trust (the Trust) for a parcel of land located in Canyon County. Also on March 27, 2006, the IACCFA entered into an option to purchase agreement with the Trust for the same

parcel of land. In consideration for the option to purchase the property, the option purchase agreement required a \$500,000 security deposit. The County paid the security deposit to the IACCFA, which paid the deposit to the Trust.

The Residents filed a complaint seeking a declaration as to whether: (1) the lease violated the Idaho Constitution; (2) the County incurred a “ordinary and necessary expense” by entering into the lease agreement; (3) the County, in conjunction with the IACCFA, “purchased” the parcel of land; (4) the County commissioners acted “ultra vires” by entering into the lease agreement; (5) the lease is void; and (6) the County has any obligations pursuant to the option to purchase agreement. After a hearing, the district court dismissed the Residents’ complaint with prejudice for lack of standing.

The Residents argue that the district court erred, and that they have sufficient standing to challenge the constitutionality of the County’s lease.

The County and the IACCFA reject the Residents’ arguments, and argue that because the of Residents’ lack of standing, the Idaho Supreme Court does not have jurisdiction to consider the case.